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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,675	08/15/2006	Daniel Baumgartner	8932-1190-999	2286

51832 7590 12/07/2007  
JONES DAY  
222 EAST 41ST STREET  
NEW YORK, NY 10017-6702

EXAMINER
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MERENE, JAN CHRISTOP L

ART UNIT	PAPER NUMBER
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4123

MAIL DATE	DELIVERY MODE
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12/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,675	<b>Applicant(s)</b> BAUMGARTNER ET AL.	
	<b>Examiner</b> Jan Christopher Merene	<b>Art Unit</b> 4123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/7/2005</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This is the initial Office action based on the 10/552,675 application filed on August 15, 2006. Claims 1-15, as originally filed, are currently pending and have been considered below. Claims 1 and 15 are independent.

#### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

#### ***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: --Snap-in (and/or Hook, Lugs, Detent, etc)  
Means for Anchoring Intervertebral Implants--.

4. The arrangement of the specification is objected by the examiner.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

Art Unit: 3726

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Objections***

6. Claims 6-15 objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. **Claims 1-5** are rejected under 35 U.S.C. 102(e) as being anticipated by Castro et al 6,899,734.

Regarding **Claim 1**, Castro et al discloses an intervertebral implant with two anchoring means (endplate #340) to fix the intervertebral implant on the end plates of a body of the vertebra (see Col 4 lines 40-44, where the end caps can be configured to mount ends #14 and #16 of cage #100 and see Col 5 lines 56-57, where detents engage the underside of vertebral bodies #202 and #204) wherein

A) each anchoring means (endplate #340) comprises an anchoring part (#348, the examiner notes that although #348 is not explicitly described in the specification of the reference, it is inherent that #348 is equivalent to #48 of the embodiment shown in Fig. 3a, see Col 4 lines 40-41, where various embodiments of the end caps are shown in Figs 3a-4c and see Col 6 lines 18-20, where all of the end cap embodiments snap into or mount to the cage #10 easily and readily without requiring screws or other retention devices) comprising a central axis (although not explicitly shown in the drawings or specifications, it is inherent that endplate #340 would have a central axis) and two end faces (face #342) transverse to the central axis,

B) each anchoring means (endplate #340) comprises at least two spikes (detents #352) that protrude past the end faces (face #342), are parallel to the central axis and can be pressed into an end plate of a body of the vertebra (see Col 4 lines 56-57, where detents #352 project from face #342 to engage the underside of the vertebral bodies #202 and #204), characterized in that

C) the anchoring part (#348) comprises a hollow space (aperture #340) passing through parallel to the central axis,

D) the anchoring part comprises fastening means (#348) by means of which the anchoring part can be detachably locked on an intervertebral implant (as stated above, #348 is equivalent to that of #48 of the endcap embodiment shown Fig 3a, see Col 4 lines 45-52, where #48 is semi resilient and is snap into recess #23 of cage #10),

E) the intervertebral implant comprises a closing plate each (ends #14 and #16 of cage #100) that intersects the central axis, and

F) the closing plates (ends #14 and #16 of cage #100) can pass through the hollow spaces in the anchoring parts implant (as stated above, #348 is equivalent to that of #48 of the endcap embodiment shown Fig 3a, see Col 4 lines 45-52, where #48 is semi resilient and is snap into recess #23 of cage #10).

Regarding **Claim 2**, Castro et al discloses an intervertebral implant, characterized in that the fastening means can be elastically deformed (as stated above, #348 is equivalent to that of #48 of the endcap embodiment shown Fig 3a, see Col 4 lines 45-52, where #48 is semi resilient and is snap into recess #23 of cage #10) transversely to the central axis and in the non-deformed state protrude into the hollow space (as seen in Fig 4a).

Regarding **Claim 3**, Castro et al discloses an intervertebral implant, characterized in that the fastening means are hooks (#348) that can be elastically deformed transversely to the central axis with lugs facing the central axis (as stated above, #348 is equivalent to that of #48 of the endcap embodiment shown Fig 3a, see Col 4 lines 45-52, where #48 is semi resilient and is snap into recess #23 of cage #10).

Regarding **Claim 4**, Castro et al discloses an intervertebral implant, characterized in that the hooks (#348) are provided in the hollow space (as seen in Fig 4a).

Regarding **Claim 5**, Castro et al discloses an intervertebral implant, characterized in that the fastening means and the anchoring part are integral (as seen in Fig 3a, where #48 is integral).

### **Conclusion**

Please refer to Form 892, Notice of References Cited, where the examiner notes pertinent art, which was not used in this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan Christopher Merene whose telephone number is 571-270-5032. The examiner can normally be reached on Mon-Thurs 7:30 am -6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on 571-272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JCM

/Essama Omgba/  
Primary Examiner, Art Unit 3726